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Supreme Court, U.S.
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No. 00-1502

IN THE

Supreme Court of the United States

DOUG GRANT, INC., *et al.*,

Petitioners,

v.

GREATE BAY CASINO CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR CASINO RESPONDENTS (OTHER THAN THE TRUMP CASINO RESPONDENTS) AND GRIFFIN INVESTIGATIONS

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STATEMENT PURSUANT TO RULE 29.6

1. Hilton Hotels Corporation
   - Publicly traded
   - South Eastern Asset Management, Inc. owns greater than 10%

2. GNOC, Corp. t/a "Atlantic City Hilton"
   - Not publicly traded
   - Wholly owned subsidiary of Bally's Park Place, Inc. (see 3, below)

3. Bally's Park Place, Inc. t/a Bally's Park Place"
   - Publicly traded
   - No one owns greater than 10% of the stock

4. ITT Corporation
   - Wholly owned subsidiary of Starwood Hotels & Resorts Worldwide, Inc. ("Starwood")
   - No one owns greater than 10% of Starwood

5. ITT Corporation NV
   - Not publicly traded
   - Wholly owned subsidiary of Starwood Hotels & Resorts Worldwide, Inc.

6. Caesar's World, Inc., a/k/a "Caesar's Atlantic City"
   - Wholly owned subsidiary of Bally's Park Place, Inc. (see 3, above)

7. Harrah's Entertainment, Inc.
   - Publicly traded
   - Bank of New York owns greater than 10% of common stock
   - Chase Manhattan Bank owns greater than 10% of common stock
   - Putnum Investments owns greater than 10% of common stock
   - State Street Bank & Trust Company owns greater than 10% of common stock

8. Marina Associates d/b/a "Harrah's Casino Hotel"
   - Not publicly traded
   - Wholly owned subsidiary of Harrah's Entertainment, Inc.

9. Sun International North America, Inc.
   - Not publicly traded
   - Wholly owned subsidiary of Sun International Hotels, Ltd.

10. Sun International Hotels, Ltd.
    - Publicly traded
    - Sun International Investments owns greater than 10%
    - Baron Capital owns greater than 10%

11. Resorts International Hotel, Inc.
    - Not publicly traded
    - Wholly owned subsidiary of Colony RIH Acquisition, Inc. which is not publicly traded

12. Showboat, Inc.
    - Not publicly traded
    - Wholly owned by Harrah's Operating Company which is wholly owned by Harrah's Entertainment, Inc. (see 7, above)

13. Showboat
    - Not publicly traded
    - Wholly owned subsidiary of Ocean Showboat, Inc., which is wholly owned by Showboat, Inc. (see 12, above)

14. Aztar Corporation
    - Publicly traded
    - GAMCO Investors, Inc. owns greater than 10%

15. Adamar of New Jersey, Inc., t/a Tropicana Casino and Resort
    - Not publicly traded
    - Wholly owned subsidiary of Aztar Corporation

16. Claridge Hotel & Casino Corp.
    - Not publicly traded

17. Claridge at Park Place, Inc.
    - Wholly owned subsidiary of Claridge Hotel & Casino Corp. (see 16, above)

18. Griffin Investigations
    - Not publicly traded
    - No public corporation owns greater than 10% of the stock

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether the United States Third Circuit Court of Appeal's denial of Petitioner's motion requesting an evidentiary hearing on alleged possible conflicts of interest of the district court warrants a reversal of the Court's decision. Petitioners argue that the Court erred by denying the motion on the purported basis that it was conducting a plenary review of the record. However, the Third Circuit did not deny the motion on the basis represented by Petitioner. Rather, the Third Circuit stated that it had carefully considered the motion and was denying it on the basis that it was without merit. *See Doug Grant, Inc. v. Greate Bay Casino Corporation* 232 F.3d 173, 190 n.8 (3d Cir. 2000). The Court then offered the additional commentary that since it was exercising a plenary review of the district court's dismissal it would not matter even were the Petitioners' concerns arguable. *Id.* This additional comment was not a holding. Even if it were, the Third Circuit was clear that the motion was without merit and the Petitioners concerns were not justified by the record it reviewed.

In framing the purported issue in this case, Petitioners have blatantly mischaracterized the Third Circuit's holding. As recognized by the Third Circuit, and as will be discussed below, the Petitioners have shown a pattern of mischaracterizing facts throughout this litigation. In addition, they have continued a pattern of baseless accusations of conflict on the part of federal court judges. To the Third Circuit they alleged a conflict on the part of the district court; In this Petition, they allege a conflict on the part of the Third Circuit. This is merely more of the chaff that has characterized this case from the beginning. The Third

Circuit's ruling was proper in all respects and Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

I.

NEITHER THE RECORD NOR THE DECISION BELOW RAISE THE QUESTION PRESENTED BY THE PETITION

The issue in the case below was whether certain conduct alleged by the Petitioners to have been taken against them by the individual Atlantic City Casinos and Griffin Investigations was sufficient to support a RICO claim. The Third Circuit thoroughly analyzed each of the allegations of the Petitioners and properly determined that they could not support a RICO claim. The Third Circuit held in part:

> For the reason we have set forth, we have reached the conclusion that appellants' allegations that the casinos or any appellee has committed predicate RICO acts are completely insubstantial and border on the frivolous.

Id. at 187.

The Petitioners purported question presented for review completely mischaracterizes the Third Circuit's decision. The Petitioners seek to have this Court decide a non-existent issue. As noted, this type of conduct is a common thread throughout these proceedings. The Third Circuit noted in one instance:

> Appellants attempt at length to skew the plain meaning of this regulation and the relevant

> regulatory history leading to its adoption to convince us that the CCC has authorized only a "random shuffle-at-will," *i.e.*, not a reshuffle that occurs only during player favorable counts.

Id. at 185. In another portion of its decision the Third Circuit noted:

> We are disturbed that appellants have couched their arguments in dramatic hyperbole obfuscating the real issues. *Indeed, we are satisfied that the appellants have mischaracterized the facts.* For instance, appellants characterize the use of the shuffle-at-will as "secretly removing cards from a blackjack game in progress." See br. at 30. But the reshuffle is hardly secret as the dealer does it openly in the view of the players. Moreover, a dealer reshuffling does not remove cards from the deck. Rather, the reshuffle simply places cards in a different random order for the next hands.

Id. (emphasis added).

Here, Petitioners have once again engaged in a mischaracterization and they premised their entire Petition on that mischaracterization. The Third Circuit did not disregard a conflict of interest on the part of the district court as Petitioners have asserted. It specifically considered the Petitioners allegations and found them to be meritless. *See id.* at 190 n.8.

II.

THE THIRD CIRCUIT'S RULING DOES NOT HAVE FAR REACHING ETHICAL IMPLICATIONS

Petitioners argue that the Third-Circuit's decision will send the "wrong message" to the public and district court judges. This, of course, ignores the actual holdings of the Third Circuit. Rather, it is Petitioners re-litigation of the identical issues in forum after forum that is problematic. The Third Circuit recognized the Petitioners had filed the present action and multiple declaratory petitions with the CCC. Indeed, the Petitioners also had an appeal pending with the New Jersey Superior Court, Appellate Division on the identical issues raised in this matter and had a one point sought a stay from the Third Circuit which application was denied.

The Third Circuit recognized that the New Jersey Supreme Court in *Campione v. Adamar of N.J., Inc.*, 155 N.J. 245, 714 A.2d 299 (N.J. 1998) made it clear that the CCC lawfully may permit the blackjack countermeasures which Petitioners are once again attacking in this litigation. Moreover, since the Third Circuit's instance decision, the New Jersey Superior Court, Appellate Division has rejected yet another challenge to the card-counter countermeasures and upheld the CCC implementation of those rules of the game. In so doing, it also recognized the fact that the same group of Petitioners was seeking to relitigate issues that were disposed of adversely to them in the present federal suit. *See Doug Grant, Inc., et al. v. New Jersey Casino Control Commission,* decided April 16, 2001

(Docket Nos. A-3605-98T3; A-999-99T3) (unpublished, copy submitted separately as a Lodging Appendix). The Appellate Division held:

> Given this standard and the comprehensive control which the Casino Control Act, *N.J.S.A.* 5:12-1 to 152, delegates to the CCC over the "rules and conduct of licensed casino games," *Uston v. Resorts International Hotel, Inc.*, 89 *N.J.* 163, 169 (1982), we see no basis for plaintiffs' challenges to the regulations set out above. We agree with the CCC that the separate challenge to *N.J.A.C.* 19:40-1.3(c), constitutes simply an indirect attack on the three countermeasure regulations. We are unpersuaded by plaintiffs' argument that these regulations operate so as to deprive the non-card counting public of a fair opportunity to win and, indeed, constitute a form of deceptive conduct.

Id.

Thus, it is the conduct of Petitioners and their attorney that raises ethical concerns, not the actions of either of the Courts below. The Petitioners have litigated and re-litigated identical issues *ad nauseam*. Their arguments have been rejected at the federal court level, the New Jersey Agency level, and the New Jersey State Trial, Appellate and Supreme Court level. They now seek to attack those who made these decisions. They attacked the district court judge alleging conflicts of interest. The Third Circuit carefully considered their motion and found the Petitioners allegations to be without merit to warrant an evidentiary hearing. In the present Petition they now attack the Honorable Maryanne Trump

Barry of the Third Circuit alleging conflicts of interest. Judge Barry was not even involved in the Third Circuit's decision. Petitioners desperate and reckless conduct with respect to repeated mischaracterization of the record and attack on federal court judges is nothing short of disgraceful.

The Petitioners purported issue for review is a non-issue. The Third Circuit did not hold that it need not consider the alleged conflict issues since its review was plenary. The Third Circuit considered the motion and denied it on the merits. This case raises no issues of law or ethics which warrants this Court's review.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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